

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PEPSICO, INC.,

Plaintiff,

- against -

F & H KOSHER SUPERMARKET, INC., d/b/a
SCHWARTZ KOSHER SUPERMARKET, d/b/a
SCHWARTZ SELF SERVICE GROCERY, d/b/a
SCHWARTZ GROCERY STORE,

Defendant.
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ROSLYNN R. MAUSKOPF, United States District Judge.

ORDER
11-CV-0425 (RRM)(ALC)

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ DEC 12 2011 ★

BROOKLYN OFFICE

Plaintiff PepsiCo, Inc. ("PepsiCo"), filed its complaint in the instant action on January 28, 2011, alleging that defendant F & H Supermarket, Inc., d/b/a Schwartz Kosher Supermarket, d/b/a Schwartz Self Service Grocery, d/b/a Schwartz Grocery Store ("Schwartz"), sold within the United States soft drinks bearing the PEPSI marks that were manufactured, bottled, and meant for sale only in Israel and are materially different from the soft drinks PepsiCo sells in the United States under the PEPSI marks. (Decl. of Anthony DiPaolo ("DiPaolo Decl.") (Doc. No. 5-1) at ¶¶ 2; Compl. (Doc. No. 1) at ¶¶ 12-16.) PepsiCo alleged that Schwartz's unauthorized sales were likely to cause consumer confusion and dilution. (Compl. (Doc. No. 1) at ¶¶ 18, 31-36, 38-39.) On March 11, 2011, plaintiff moved for default against defendant because it failed to respond to the complaint or appear in the action. On March 15, 2011 and June 6, 2011, this Court referred plaintiff's default motion to the assigned Magistrate Judge, the Honorable Andrew L. Carter, for a Report and Recommendation (the "R&R") in accordance with 28 U.S.C. § 636(b).

On August 26, 2011, Judge Carter issued an R&R recommending that default judgment enter in favor of plaintiff and that this Court issue a permanent injunction against defendant and

award plaintiff attorneys' fees in the amount of \$18,440.59. Judge Carter reminded the parties that, pursuant to Rule 72(b), any objections were due 14 days from the date of the R&R. To date, no party has filed any objections. As reflected in the proof of service filed by plaintiff's counsel (Doc. No. 10), defendant was served with the R&R on August 29, 2011.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error and, finding none, concurs with the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007). Accordingly, the R&R is adopted in its entirety.

It is hereby ORDERED that plaintiff's motion for default judgment (Doc. No. 6) is GRANTED. F & H Kosher Supermarket, Inc., d/b/a Schwartz Kosher Supermarket, d/b/a Schwartz Self Service Grocery, d/b/a Schwartz Grocery Store, and its officers, agents, servants, employees, successors and assigns, and all others in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently enjoined and restrained from the importation into, and the dealing, marketing, sale or distribution in the United States of soft drinks manufactured or bottled in Israel bearing PepsiCo's famous federally registered trademarks PEPSI, PEPSI-COLA, the distinctive red, white and blue logo, and combinations of variations on this logo with PEPSI and PEPSI-COLA. Judgment shall enter in favor of plaintiff in the amount of \$18,440.59 for attorney's fees and related expenses.

The Clerk of Court is directed to enter judgment accordingly, mail a copy of this Order and the Judgment to defendant, and close the case.

SO ORDERED.

Dated: Brooklyn, New York
December 9, 2011

s/Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge